



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
WASHINGTON, D.C. 20314-1000

REPLY TO
ATTENTION OF:

SEP 11 2002

CECW-OR (1145)

MEMORANDUM FOR ALL MAJOR SUBORDINATE COMMANDS, DISTRICT
COMMANDS

SUBJECT: Nationwide Permit Data Collection Items

1. Enclosed is the revised document defining the data items and information we have determined are necessary to meet the data collection commitments made in issuing the nationwide permits. Districts will ensure that the data element relationships are established, to facilitate reporting.
2. If you should have any question please contact Mr. David Olson, Program Manager, Regulatory Branch at 202-761-4598.

Encl

A handwritten signature in cursive script, reading "Charles K. Stark, Jr.", is positioned above the typed name.

Charles K. Stark, Jr.
Acting Chief, Regulatory Branch
Operations Division
Directorate of Civil Works

CECW-OR

SUBJECT: Nationwide Permit Data Collection Items

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COMMANDER,	TULSA DISTRICT, ATTN: CESWT-PE-R

Nationwide Permit (NWP) Data Collection

GOALS

1. To collect information on the use of NWPs, including information on the environmental impacts of the NWPs. This information will be used in documenting compliance with the National Environmental Policy Act, the Endangered Species Act (ESA), and Clean Water Act.
2. To measure performance relative to the commitment made in the January 15, 2002, Federal Register notice for the reissuance of the NWPs, whereby Corps districts will ensure that verified NWPs "achieve at least one-for-one mitigation of all wetlands impacts, on an acreage basis for the District as a whole." (See 67 FR 2064) It is also stated "Districts should not include preservation of existing wetlands in their district-level tally of compensating wetlands mitigation." This performance metric is to be reported on a quarterly basis and evaluated on an annual basis.

DISCUSSION

1. Certain data items about the NWPs are already collected by Corps Districts. The present variation in Corps databases, however, will require that each District ensure its data set will include the information required for reporting. The headquarters' reporting requirement for nationwide permits will require the data items discussed below. Districts should be conservative when collecting additional data items.
2. Each verification that an action is/is not authorized by an NWP will trigger a data collection requirement. Where a letter verifies that multiple (stacked) NWPs apply to multiple actions, or where there are one or more NWP verifications associated with an individual permit, information will be collected about each NWP verification. The information described below will be collected about all NWPs that require a preconstruction notification (PCN) (NWP# - 3, 5, 7, 12, 13, 14, 17, 18, 21, 27, 29, 31, 34, 37, 38, 39, 40, 41, 42, 43, and 44) or where an applicant requests verification of authorization (any NWP) even though a PCN is not required.
3. Activities authorized by NWP 27 are to be reported as follows:
 - a. For NWP 27 activities conducted in accordance with agreements between the landowner and the U.S. Fish and Wildlife Service, Natural Resources Conservation Service, National Marine Fisheries Service, or the National Ocean Service, or for NWP 27 activities for reclaimed surface coal mine lands (paragraphs (a)(1) and (a)(2) of the NWP) the acres of jurisdictional wetlands to be filled, flooded, and/or drained to conduct the stream or wetland establishment, restoration, or enhancement activity should be reported in the verified data field. If the verified NWP 27 activity is a wetland establishment, restoration, and/or enhancement activity, the number of acres reported in

the mitigation data field should be the acres of wetlands that will be established, restored, and/or enhanced as compensatory mitigation for the authorized activity. Even if compensatory mitigation is not specifically required for impacts resulting from the wetland establishment, restoration, or enhancement activity, districts should still enter the same number of acres in the mitigation data field as is entered in the verified data field. However, the net gains in wetland acreage that result from these activities are likely to be counted by the other Federal agencies, and therefore should not to be counted by the Corps. In addition, the acres of wetlands protected/maintained (i.e., preserved) as a component of the verified NWP 27 activity will not to be reported in the mitigation data field.

Example: If a proposed wetland restoration agreement between the landowner and the Natural Resources Conservation Service involves discharges of dredged or fill material into waters of the U.S. that result in the loss of 0.25 acre of non-tidal wetlands to establish 2 acres of non-tidal wetlands, restore 5 acres of non-tidal wetlands, enhance 1 acre of non-tidal wetlands, and protect/maintain 10 acres of non-tidal wetlands, the values entered into the verified data field would be 0.25 acre. If one-to-one compensatory mitigation on an acreage basis would be required for that activity, 0.25 acre would be entered into the mitigation data field. If no compensatory mitigation would be required for that activity, then 0.25 acre would still be entered into the mitigation data field.

b. For NWP 27 activities conducted on other public, private, or tribal lands (paragraph (a)(3) of the NWP), the acres of jurisdictional wetlands to be filled, flooded, and/or drained to conduct the stream or wetland establishment, restoration, or enhancement activity should be reported in the verified data field. If the verified NWP 27 activity is a wetland establishment, restoration, and/or enhancement activity, the number of acres reported in the mitigation data field should be the expected acreage of wetlands that will be established, restored, and/or enhanced as by the authorized activity. The acres of wetlands protected/maintained (i.e., preserved) as a component of the verified NWP 27 activity are not to be reported in the mitigation data fields, but would be reported in the wetland protection/maintenance mitigation data field.

Example: If an NWP 27 activity proposed by a landowner involves discharges of dredged or fill material into waters of the U.S. that result in the loss of 0.25 acre of non-tidal wetlands to establish 2 acres of non-tidal wetlands, restore 5 acres of non-tidal wetlands, enhance 1 acre of non-tidal wetlands, and protect/maintain 10 acres of non-tidal wetlands, the values entered into the verified and mitigated data fields would be 0.25 acre and 8 acres, respectively. The 10 acres of protected/maintained wetlands would be entered into the wetland protection/maintenance mitigation data field.

DATA ITEMS

1. Nationwide Permit Number (NWP#) - Collect the number of the nationwide permit, which is being used to authorize the action.
2. NWP Decision – collect about each NWP request, choosing from the following:
 - a. Verified – The Corps determines the project complies with the terms and conditions of the NWP. Collect all data, as defined below, for these actions.
 - b. Discretionary Authority, More Than Minimal Effect – The Corps has determined that the action exceeds the minimal effect test and discretionary authority is exercised. Collect all data, as defined below, for these actions.
 - c. Denied – The Corps has determined the action does not meet the terms and conditions of the NWP. Collect all data, as defined below, for these actions.
 - d. Withdrawn, no permit required – The Corps has determined that no permit was needed. Do not collect data, as defined below, for these actions.
 - e. Withdrawn, applicant – The applicant decides to withdraw the verification request. Do not collect data, as defined below, for these actions.
 - f. Withdrawn, accounting error – The application record was withdrawn to correct an accounting error (e.g., same request entered twice). Do not collect data, as defined below, for these withdrawn actions.
3. The status of the impact area will be collected with respect to Federally-listed species critical habitat. When the impact area is Federally listed species critical habitat, collect a “yes.” When it is not, collect a “no.”
4. Collect the results of the Corps ESA determination (does not have to be written for “no effect”) for each action, choose one of the following:
 - a. No effect – This means that the Corps has made a negative “may affect” determination concerning any Federally listed species or its critical habitat. (50 CFR 402.14(a) or 50 CFR 402.14(l)(2))
 - b. Not likely to adversely affect – This means the Corps has made a determination that the project is not likely to adversely affect any Federally listed species or critical habitat, and with written concurrence by the FWS or NMFS, that the project may proceed. This determination completes informal consultation (50 CFR 402.14(b)(1)), or terminates formal consultation (50 CFR 402.14(l)(3)).

- c. No jeopardy/No adverse modification – This means the Corps has made a determination that the project can proceed without exceeding the jeopardy/adverse modification standards. This is not the Services' No Jeopardy Biological Opinion.
- d. Jeopardy/adverse modification – This means the Corps has determined that if the project proceeds, it will exceed the jeopardy/adverse modification standards. (50 CFR 402.02)) This is not the Services' Jeopardy Biological Opinion. (50 CFR 402.14(h))
5. Collect the name(s) of the Federally listed species that triggered a consultation (4.b. Not likely to adversely effect, 4.c. No jeopardy, and 4.d. Jeopardy) on an individual action, if there was a "no effect determination" do not enter data. The names will be collected both as common name and scientific name. The intent is to allow the computer pick list to be custom (either common or scientific, and listed within the district) for each district.
6. Remarks – This data item is being provided for discretionary use by PMs. Do not include information that is not suitable for distribution to the public. This field is for use in those instances which the PM wishes to record additional information such as refined action descriptions, cumulative impacts information, related actions/permits, and activities in State-designated natural areas. Remarks may include any brief noteworthy observations about the proposed NWP action that would clarify or add to any of the other data collected on that proposal.
7. For each NWP action, the location of the impact is to be collected by watershed as identified by the USGS hydrologic cataloging unit.
8. For every NWP action, the location of the impact area in the watershed, with respect to the relevant headwaters (defined at 33 CFR 330.2(d)) and isolated waters (defined 33 CFR 330.2(e)) will be collected.
- a. Above headwaters - the action is above the headwaters.
- b. Below headwaters - the action is below the headwaters.
9. For each action, the impact data is to be collected, using the Cowardin classification system.
10. For each action, indicate whether the impact is occurring in wetlands or in waters other than wetlands.
11. All impact data is to be collected by acres of impact requested, and acres of impact verified, and will be related to the type of project. For NWPs 12, 13, and 14 an additional data item will

be available to allow collection of the impact data as linear feet (e.g., 100 ft. pipeline crossing, 100 ft. bank stabilization project, or 50 ft. road crossing.)

a. All impact data is to be collected by the number of acres that would be impacted (filled/flooded/excavated/drained) by the activity when:

(1.) Requested – the number of acres of impact included in the requests for nationwide permit verifications, at the time they were considered complete. This includes the number of acres filled [see for definition, “Filled area”, 33 CFR 330.2(f)] plus waters of the United States that are adversely affected by flooding, excavation or drainage as a result of the project. For NWP 12, 13, 14, 39, 40, 41, 42, 43 and 44, the number of linear feet of impact is to be collected when it is the best descriptor of the requested/verified impact type. Only one unit of measure, acres or linear feet, may be collected when both types of impact result from activities being authorized. The PM’s choice is made based on the best fit with the type of System feature being impacted (e.g., linear feet with shoreline impacts for bank stabilization). NWP 12 is typically either linear feet for the crossing of a Riverine System or acres for crossing a wetland. NWP 13 is typically linear feet along the shoreline of Marine, Riverine and Lacustrine Systems. NWPs 14 and 39 may contain both types of impacts, and the PM should select the predominate one for the activities involved, and

(2.) Verified – the number of acres projected to be impacted, as identified at the date of verification. This includes the number of acres filled [see for definition, “Filled area”, 33 CFR 330.2(f)] plus waters of the United States that are adversely affected by flooding, excavation or drainage as a result of the project. For NWP 12, 13, 14, 39, 40, 41, 42, 43, and 44, the number of linear feet of impact is to be collected when it is the best descriptor of the requested/verified impact type. Only one unit of measure, acres or linear feet, may be collected when both types of impact result from activities being authorized. The PM’s choice is made based on the best fit with the type of System feature being impacted (e.g., linear feet with shoreline impacts for bank stabilization). NWP 12 is typically either linear feet for the crossing of a Riverine System or acres for crossing a wetland. NWP 13 is typically linear feet along the shoreline of Marine, Riverine and Lacustrine Systems. NWPs 14 and 39 may contain both types of impacts, and the PM should select the predominate one for the activities involved.

b. All NWP mitigation data is to be collected as acres or linear feet provided by the permittee or by acres debited from a mitigation bank or acres or linear feet debited when other mitigation is provided (e.g., an in-lieu fee arrangement). Only one unit of measure, acres or linear feet, may be collected for mitigation data; the PM should select the most appropriate unit of measure for the activity. The mitigation data will be for compensatory mitigation provided through establishment (i.e., creation), restoration (re-establishment and rehabilitation), and enhancement. Acres or linear feet of compensatory mitigation provided through protection/maintenance (i.e., preservation) will be collected in a separate data field. If stream restoration is required as compensatory mitigation, then linear feet may be the more appropriate unit of measure. No correlation will be made in the mitigation data concerning the type of system being impacted and the type of system being provided as mitigation. There is no intent to demonstrate the success or failure of mitigation efforts through the collection of this data. Therefore, the PM is only required to collect the number of acres (or linear feet) required at the time of verification. The acres (or linear feet) of the impact and the acres (or linear feet) of mitigation will be collected. These are best judgment data items. All mitigation data is to be collected by number of acres (or linear feet) that will be required to provide offsetting mitigation as a condition of verifications. Applicants may propose more than one method for off-setting impacts, the number of acres (or linear feet) collected will represent the best fit description of the method(s) accepted by the Corps, there is no provision for multiple types of mitigation. Where mitigation is not required, do not collect data. The data will be collected in five categories;

- (1.) Permittee mitigation – where the permittee is providing (i.e., constructing, other than a mitigation bank or through other collective arrangements) an individual mitigation project to provide the wetland mitigation through establishment, restoration, and/or enhancement,
- (2.) Mitigation bank – where the permittee is providing wetland mitigation (by establishment, restoration, and/or enhancement) by debiting a mitigation bank,
- (3.) In lieu fee mitigation – where the permittee is providing wetland mitigation (by establishment, restoration, and/or enhancement) through an in lieu fee arrangement. For in lieu fee mitigation arrangements, indicate the number of acres required to offset the impact,
- (4.) Wetland protection/maintenance mitigation – where the permittee is providing mitigation through protection/maintenance

of existing wetlands, and

(5.) Mitigation (waters other than wetlands) – where the permittee is providing mitigation for impacts to waters of the U.S. other than wetlands.